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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/661,912

09/12/2003

James P. Gardner JR.

1324US11

8343

43896

7590

01/28/2008

ECOLAB INC.

MAIL STOP ESC-F7, 655 LONE OAK DRIVE

EAGAN, MN 55121

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

01/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/661,912

Applicant(s)

GARDNER ET AL.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 12, 15-19 and 22-53 is/are pending in the application.
- 4a) Of the above claim(s) 22, 23, 31-40, 45, 47-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12, 15-19, 22, 24-29, 41-44, 46 and 53 is/are rejected.
- 7) ☒ Claim(s) 30 is/are objected to.
- 8) ☒ Claim(s) 1-9, 12, 15-19 and 22-53 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

Claims 22,23,31-40,45,47-52 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3/8/07

.Note that boric acid, not Mg nanoparticles, is the elected stabilizer.

This application contains claim22,23,31-40,45,47-52 drawn to an invention nonelected with traverse in the reply filed on 3/8/07 A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

Claims 1, 3, 5, 7, 12, 16, 17, 41-44, 46, and 53 stand rejected under 35 U.S.C. 102(e) as being anticipated by BARCAY et al 5820855.
Base baits of water are at column 2, lines8-16, with the stabilizer not further limited instantly, fat; with protein, the instant stimulant and/or attractant (column 3, lines 43, 44, 48).

An insecticidally effective amount of insecticide, acephate (column 2) is one of a few insecticides specified. Boric acid is preferred (column 4, lines 14-27) with the stabilizer, soy oil (column 2, lines 11, 12) at 70% of the 50% water powder, or 35% of the total composition. Claims 5, 9, 12 are met, see Fig. 1; day 7 shows more than 10% increased effectiveness over unstabilized bait. Applicant's arguments do not hold water; no free water is claimed, nor are the attributes regarding ingestion; of the attributes not of patentable weight of the composition.

No nanoparticles are required, of claims 41-44, and 46.

Claim 1, 3-5, 7, 9, 12, 16-19, 46 stand rejected under 35 U.S.C. 102(b) as being anticipated by HONUYU et al CN1155978.

Here too, the unspecified instant stabilizer can be seen as inclusive of the gelling agent. The HONSYU invention seems to meet the instant criteria for efficacy, thus is sufficiently stabilized, even though the word is not used.

Claim 1-0, 12, 15-19, 24-29, 41-44, 46 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DYKSTRA et al WO9/07972

Boric acid, the instant stabilizer, although not so stated by DYKSTRA, and acephate, are obvious to combine, as claim 2 so states, with examples providing effective concentrations, within the purview of the artisan to arrive. Such combination meets the instant composition, whether or no functions are proclaimed by DYKSTRA.

No nanoparticles are required, of claims 41-44, and 46.

Double Patenting

Claim1-9, 12, 15-19, 24-29, 41, 42, 53 stand. rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim1-11 of U.S. Patent No. 7192600. Although the conflicting claims are not identical, they are not patentably distinct from each other because for reason of record.

Claims1-6, 8, 9, 16 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim1-6 of U.S. Patent No. 5820855. Although the conflicting claims are not identical, they are not patentably distinct from each other for reason of record

Response to Arguments

Applicant's arguments filed 11/5/07 have been fully considered but they are not persuasive. Applicant's arguments have been addressed above. The essence of argument is based on free water; absent from claims however, thus, rejections over borates stand; so do double patenting rejections. We concur with arguments over KATAYANA and BLUM; neither have water, so the 103 rejection is withdrawn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

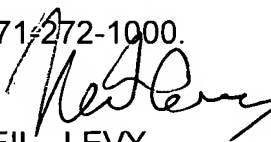
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NEIL LEVY
Primary Examiner
Art Unit 1615